

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

INCOME TAX REFERENCE NO.169 OF 1983

For Approval and Signature :

Hon'ble Mr.Justice N.J.PANDYA

and

Hon'ble Mr.Justice S.D.PANDIT

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The Commissioner of Income Tax,Rajkot

versus

M/s.Arunodaya Mills Ltd.Morvi.

Appearance :

Mihir Thakore with Manish.R.Bhatt for the petitioner.

Respondent served.

CORAM :N.J.PANDYA & S.D.PANDIT,JJ.

Date of decision : 30-8-1996.

ORAL JUDGMENT

Per N.J.Pandya, J.

Though 4 questions are referred to us, in fact it relates to company having contributed sum of Rs.5,00,000/-(Rupees Five Lacs) paid to the trustees of the trust designated as " Arunoday Mills Limited Employees Welfare Fund".The tribunal which agreed with the order of the Commissioner of Income Tax (Appeals) had earlier dealt with the similar question in relation to the very respondent assessee-company. It was done by R.A.No.1061/Ahd/1980 and was decided on 3rd February,1981. In other words for the year under the consideration in this reference as well as for the previous year constantly, the Commissioner of Income Tax as well as the Appellate Authority have held in favour of the assessee.

2. The facts stated in the order of the tribunal are very short because it adverts to the said earlier order and does not set out its reasons in detail. We were therefore,taken through the order of the Commissioner of Income Tax who has given details as to the nature of transaction as well as the arguments advanced by the respective sides. Thereafter, the learned Appellate Commissioner has given his own

reasons and has allowed the claim of the assessee.

3. The only contention that was seriously advanced before the authorities below was that the amount in fact has not been spent by the company and that it was not towards any liability that had accrued.

4 However, there is a Division Bench's decision of this very court reported in ITR 210 P.358 where similar situation had arisen. The company had decided by a resolution dated 7th January, 1975 to constitute an employee welfare fund. In the month of March 1975 resolution to contribute sum of Rs.5,00,000/- (Rupees Five Lacs) was passed and on the next day i.e. on 26th March, 1975, two entries were posted in the accounts of the Company. First was a credit entry in favour of the said fund and another a debit entry showing as an amount having been spent for staff welfare fund.

5. The learned Judges of the Division Bench held that these expenses which are consistent have been claimed under Section 37 of the Income Tax Act, and, therefore, the reference was answered in favour of the assessee.

6. In the case before us, the reference at the instance of revenue that in view of the consistent finding as well as the reasons of the Division Bench of this Court with which we respectfully agree, this reference is answered in the negative. The reference is disposed of accordingly with no order as to cost.

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